UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

VIRTAMOVE, CORP., Plaintiff, v. HEWLETT PACKARD ENTERPRISE COMPANY, Defendant.	Case No. 2:24-cv-00093-JRG (Lead case)
VIRTAMOVE, CORP., Plaintiff, v. INTERNATIONAL BUSINESS MACHINES CORP., Defendant.	Case No. 2:24-CV-00064-JRG (Member case)

JOINT CLAIM CONSTRUCTION AND PREHEARING STATEMENT

Pursuant to Local Patent Rule 4-3 and the operative Docket Control Orders in this case (Dkts. 92 & 122), Plaintiff VirtaMove, Corp. ("Plaintiff") and Defendants Hewlett Packard Enterprise Company and International Business Machines Corp. (collectively, "Defendants") (together, the "parties") respectfully submit the following Joint Claim Construction and Prehearing Statement.

I.   AGREED CLAIM CONSTRUCTIONS (P.R. 4-3(A)(1))

The parties' agreements as to the terms in the VirtaMove patents are set forth in Appendix A below.

1

The parties' agreements as to the terms in the IBM Counterclaim patents are set forth in Appendix B below.

II.   DISPUTED CLAIM CONSTRUCTIONS (P.R. 4-3(A)(2))

As to the VirtaMove patents: The parties' proposed constructions, and identification of intrinsic and extrinsic evidence is attached hereto as Appendix C. Each party also reserves the right to cite to intrinsic and/or extrinsic evidence cited by the other party.

As to the IBM Counterclaim patents: The parties' proposed constructions, and identification of intrinsic and extrinsic evidence is attached hereto as Appendix D. Each party also reserves the right to cite to intrinsic and/or extrinsic evidence cited by the other party.

III.   ANTICIPATED LENGTH OF TIME NEEDED FOR THE CLAIM CONSTRUCTION HEARING (P.R. 4-3(A)(3))

Defendants estimate that three hours will be needed for the claim construction hearing, and Plaintiff estimates that two hours will be needed. The parties agree that each side will be allocated half of the total time permitted for the hearing.

IV.   PROPOSED WITNESSES TO BE USED AT THE CLAIM CONSTRUCTION HEARING (P.R. 4-3(A)(4))

At the present time, no party proposes to call witnesses for live testimony at the claim construction hearing.

V.   OTHER ISSUES TO BE ADDRESSED PRIOR TO CLAIM CONSTRUCTION HEARING (P.R. 4-3(A)(5))

The parties are not currently aware of any issues that they would propose taking up at a prehearing conference prior to the claim construction hearing.

VI.   SERVICE OF EXPERT TESTIMONY (P.R. 4-3(B))

In accordance with Patent Rule 4-3(b) the parties will each, simultaneous with this filing, serve a disclosure of expert testimony consistent with Fed. R. Civ. P. 26(a)(2)(B)(i)-(ii) or 26(a)(2)(C) for any expert on which it intends to rely to support its proposed claim construction or indefiniteness position or to oppose any other party's proposed claim construction or indefiniteness position.

Dated: Jan. 10, 2024

Respectfully submitted,

/s/ Christian W. Conkle

Reza Mirzaie
CA State Bar No. 246953
Marc A. Fenster
CA State Bar No. 181067
Neil A. Rubin
CA State Bar No. 250761
Amy E. Hayden
CA State Bar No. 287026
Jacob R. Buczko
CA State Bar No. 269408
James S. Tsuei
CA State Bar No. 285530
James A. Milkey
CA State Bar No. 281283
Christian W. Conkle
CA State Bar No. 306374
Jonathan Ma
CA State Bar No. 312773
Daniel Kolko (CA SBN 341680)
RUSS AUGUST & KABAT
12424 Wilshire Boulevard, 12th Floor
Los Angeles, CA 90025
Telephone: 310-826-7474
Email: rmirzaie@raklaw.com
Email: mfenster@raklaw.com
Email: nrubin@raklaw.com
Email: ahayden@raklaw.com
Email: jbuczko@raklaw.com

Email: jtsuei@raklaw.com
Email: jmilkey@raklaw.com
Email: cconkle@raklaw.com
Email: jma@raklaw.com
Email: dkolko@raklaw.com

Qi (Peter) Tong
4925 Greenville Ave., Suite 200
Dallas, TX 75206
Email: ptong@raklaw.com

**ATTORNEYS FOR PLAINTIFF
VIRTAMOVE, CORP.**

Dated: January 10, 2025

By: */s/ Bethany R. Salpietra*

Jennifer Doan
Texas Bar No. 08809050
Joshua R. Thane
Texas Bar No. 24060713
HALTOM & DOAN
6500 Summerhill Road, Suite 100
Texarkana, TX 75503
Telephone: (903) 255-1000
Facsimile: (903) 255-0800
Email: jdoan@haltomdoan.com
Email: jthane@haltomdoan.com

Katharine Burke (Lead Attorney)
DC Bar Number: 985333
Katharine.burke@bakerbotts.com
Samuel L. Kassa
DC Bar Number: 187255
Sam.kassa@bakerbotts.com
BAKER BOTTS L.L.P.
700 K Street, N.W.
Washington, DC 20001-5692
Tel: (202) 639-7700
Fax: (202) 639-7890

Douglas M. Kubehl
Texas Bar No. 00796909
Doug.kubehl@bakerbotts.com
Morgan Mayne

4

Texas Bar No. 24084387
Morgan.mayne@bakerbotts.com
Bethany Salpietra
Texas Bar No. 24097699
Emily Deer
Texas Bar No. 24116352
BAKER BOTTS L.L.P.
2001 Ross Avenue, Suite 900
Dallas, TX 75201-2980
Tel: (214) 953-6500
Fax: (214) 953-6503

David Lien (*pro hac vice*)
California Bar No. 313754
David.lien@bakerbotts.com
BAKER BOTTS L.L.P.
1001 Page Mill Road, Building One,
Suite 200
Palo Alto, CA 94304-1007
Tel: (650) 739-7563
Fax: (650) 739-7663

***ATTORNEYS FOR DEFENDANT
HEWLETT PACKARD ENTERPRISE
COMPANY***

Dated: January 10, 2025   By: */s/ Kyle Calhoun*

Todd M. Friedman (admitted *pro hac vice*)
KIRKLAND & ELLIS LLP
601 Lexington Avenue
New York, NY 10022
Telephone: (212) 446-4800
Facsimile: (212) 446-4900
Email: todd.friedman@kirkland.com

Brandon H. Brown
California State Bar No. 266347
Kyle Calhoun (admitted *pro hac vice*)
KIRKLAND & ELLIS LLP
555 California Street
San Francisco, CA 94104
Telephone: (415) 439-1400
Facsimile: (415) 439-1500
Email: brandon.brown@kirkland.com

5

Email: kyle.calhoun@kirkland.com

Of Counsel:

Andrea L. Fair
Texas State Bar No. 24078488
Email: andrea@millerfairhenry.com
MILLER FAIR HENRY PLLC
1507 Bill Owens Parkway
Longview, TX 75604
Telephone: (903) 757-6400
Facsimile: (903) 757-2323

*ATTORNEYS FOR DEFENDANT
INTERNATIONAL BUSINESS MACHINES
CORP.*

Appendix A: Agreed Constructions (VirtaMove Patents)

Term	Claim(s)	Agreed Construction
Preambles	'814 Patent, claim 1 '058 Patent, claim 1	The preambles are limiting.
processor	'814 Patent, claim 1 '058 Patent, claim 1	physical computer processor
secure container / secure container of application software	'814 Patent, claims 1, 2, 6, 9, 10, 31	"A container environment where each application set appears to have individual control of some critical system resources and/or where data within each application set is insulated from effects of other applications sets," wherein "each container for use on a server is mutually exclusive of the other containers, such that read/write files within a container cannot be shared with other containers"
within a container	'814 Patent, claim 1	associated with a container
a kernel a set of associated local system files	'814 Patent, claim 1	a kernel and a set of associated local system files
user mode	'058 Patent, claim 1	the context in which applications execute
kernel mode	'058 Patent, claim 1	The context in which the kernel portion of an operating system executes. Application code cannot run in kernel mode.
instance / unique instance	'058 Patent, claim 1	"a single, specific occurrence or copy"
a processor / the processor	'814 Patent, claim 1	The term and its antecedent refer to the same entity.
a plurality of servers / the servers	'814 Patent, claim 1	The term and its antecedent refer to the same entity.
one of the servers / the server	'814 Patent, claim 1	The term and its antecedent refer to the same entity.
operating systems / the operating systems	'814 Patent, claim 1	The term and its antecedent refer to the same entity.

1

Term	Claim(s)	Agreed Construction
a plurality of different operating systems / the plurality of different operating systems	'814 Patent, claim 1	The term and its antecedent refer to the same entity.
one or more of the executable applications / the one or more of the executable applications	'814 Patent, claim 1	The term and its antecedent refer to the same entity.
a plurality of secure containers of application software / the containers of application software / the plurality of secure containers of application software / the containers	'814 Patent, claim 1	The term and its antecedent refer to the same entity.
a plurality of software applications / the plurality of software applications	'058 Patent, claim 1	The term and its antecedent refer to the same entity.
a processor / said processor	'058 Patent, claim 1	The term and its antecedent refer to the same entity.
an operating system / the operating system	'058 Patent, claim 1	The term and its antecedent refer to the same entity.
a shared library / the shared library	'058 Patent, claim 1	The term and its antecedent refer to the same entity.

Term	Claim(s)	Agreed Construction
OS critical system elements (OSCSEs) / OSCSEs	'058 Patent claims 1, 2, 3, 18	The term and its antecedent refer to the same entity.
shared library critical system elements (SLCSEs) / the SLCSEs	'058 Patent claims 1, 2, 3, 4, 18	The term and its antecedent refer to the same entity.
one or more of the plurality of software application / the one or more of the plurality of software applications	'058 Patent, claim 1	The term and its antecedent refer to the same entity.
a first of the plurality of software applications / the first of the plurality of software applications / at least first of the plurality of software applications	'058 Patent, claim 1	The term and its antecedent refer to the same entity.
a second of the plurality of software applications / the second of the plurality of software applications	'058 Patent, claim 1	The term and its antecedent refer to the same entity.
a SLCSE related to a predetermined function / a first instance of the SLCSE	'058 Patent, claim 1	The term and its antecedent refer to the same entity.

3

Term	Claim(s)	Agreed Construction
a SLCSE for performing a same function / a second instance of the SLCSE	'058 Patent, claim 1	The term and its antecedent refer to the same entity.

Appendix B: Agreed Constructions (IBM Counterclaim Patents)

Term	Claim(s)	Agreed Construction
"instructions for maintaining mapping"	'500 Patent, claim 19; '038 Patent, claim 19	No construction is necessary.
"one or more isolated environments… said isolated environments… the one or more isolated environments… an isolated environment… said isolated environment… an isolated environment…"	'634 Patent, claim 1	Each instance of "said isolated environment" refers back to the immediately preceding "an isolated environment."
"a resource mapping for an application is created…a resource mapping for an application is removed… said resource mapping"	'634 Patent, claim 1	Each instance of "said resource mapping" refers back to the immediately preceding "a resource mapping."
"source infrastructure management component"	'858 Patent, claims 1,19	Any component used by the recited "source management infrastructure."
"source infrastructure management server"	'858 Patent, claims 2,4, 5, 8, 9,19	Any server used by the recited "source management infrastructure."

5

Term	Claim(s)	Agreed Construction
"source infrastructure management client"	'858 Patent, claims 2,4, 5, 8, 9,19	Any client used by the recited "source management infrastructure."
"stopping an application"	'858 Patent, claim 1	No construction is necessary

Appendix C – Disputed Constructions & Support (VirtaMove Patents)

Term	Claim(s)	Plaintiff's Proposed Construction & Support	Defendants' Proposed Construction & Support
U.S. Patent No. 7,519,814			
disparate computing environments	'814 Patent, claim 1	"environments run by standalone computers" Intrinsic Evidence: '814 Patent at 2:16-19, 3:23-48 Extrinsic Evidence: Any expert testimony disclosed by either party under P.R. 4-3(b); any other extrinsic evidence disclosed by Defendants	"environments where computers are stand-alone or where there are multiple computers and where they are unrelated" Intrinsic Evidence • '814 Patent at 2:17-19; 2:20-22; 14:35-36
system files	'814 Patent, claims 1, 10	No construction necessary; plain and ordinary meaning. Intrinsic Evidence: '814 Patent at 2:52-3:19, 3:35-4:9, 4:56-62, 6:59-7:44, 10:18-11:40, and Figs. 2-9. Extrinsic Evidence: Any expert testimony disclosed by either party under P.R. 4-3(b); any other extrinsic evidence disclosed by Defendants	"files provided with an operating system and which are available to applications as shared libraries and configuration files" Intrinsic Evidence • '814 Patent at 2:52-54

Term	Claim(s)	Plaintiff's Proposed Construction & Support	Defendants' Proposed Construction & Support
U.S. Patent No. 7,784,058			
critical system elements / operating system critical system elements / shared library critical system elements	'058 Patent, claim 1	For "critical system elements": "any service or part of a service, 'normally' supplied by an operating system, that is critical to the operation of a software application" Intrinsic Evidence: '058 Patent at 1:21-54, 1:57-4:60, 5:21-10:46, and Figs. 1-6 Extrinsic Evidence: Any expert testimony disclosed by either party under P.R. 4-3(b); any other extrinsic evidence disclosed by Defendants	Indefinite. Intrinsic Evidence • '058 Patent at 1:21-28; 6:4-10; 6:37-45; 7:34-38 • Feb. 18, 2009 Amendment Response, at 9-10 • Jan. 15, 2010 Response, at 22 Extrinsic Evidence • *Criticality,* IEEE 100, The Authoritative Dictionary of IEEE Standards Terms (7th ed. 2000) [IBMHPE_VM_000000015] • *Operating System,* The Scott Mueller Library -Computer Dictionary (1998) [IBMHPE_VM_000000011] • Expert Declaration of Dr. Angelos Stavrou • Charles P. Shelton, Phillip Koopman, & Kobey Devale, *Robustness Testing of the Microsoft Win32 API* (Proceeding International Conference on Dependable Systems and Networks, 2000) • Engler, D. R. (1998). *The Exokernel Operating System Architecture* (Doctoral dissertation, Massachusetts Institute of Technology).

Term	Claim(s)	Plaintiff's Proposed Construction & Support	Defendants' Proposed Construction & Support
functional replicas	'058 Patent, claim 1	"substantial functional equivalents or replacements of kernel functions" Intrinsic Evidence: '058 Patent at 1:58-2:3, 3:16-4:55, 5:21-6:3, 7:63-8:60, 9:15-57, and Figs. 1-6 Extrinsic Evidence: Any expert testimony disclosed by either party under P.R. 4-3(b); any other extrinsic evidence disclosed by Defendants	Indefinite. Intrinsic Evidence • '058 Patent at 1:66-2:3; 3:16-29; 5:20-53; 8:27-44; 9:41-58 • July 1, 2009 Amendment After Final Response, at 8 • Jan. 15, 2010 Response, at 9 Extrinsic Evidence • *Replica,* Webster's II New College Dictionary (2001) [IBMHPE_VM_000000023] • *Function,* IEEE 100, The Authoritative Dictionary of IEEE Standards Terms (7th ed. 2000) [IBMHPE_VM_000000008] • *Functional,* Webster's II New College Dictionary (2001) [IBMHPE_VM_000000005] • *Function,* Microsoft Computer Dictionary (4th ed. 1999) [IBMHPE_VM_000000001] • Expert Declaration of Dr. Angelos Stavrou

Term	Claim(s)	Plaintiff's Proposed Construction & Support	Defendants' Proposed Construction & Support
forms a part of the one or more of the plurality of software applications	'058 Patent, claim 1	No construction necessary; plain and ordinary meaning. Intrinsic Evidence: '058 Patent at 1:21-54, 2:4-40, 3:6-45, 3:51-64, 4:1-5, 4:32-38, 4:48-60, 5:21-6:3, 6:31-36, 6:49-53, 6:66-7:22, 7:63-9:57, 10:26-46, and Figs. 4-6 Extrinsic Evidence: Any expert testimony disclosed by either party under P.R. 4-3(b); any other extrinsic evidence disclosed by Defendants	"literally form a part of the application such that it resides in the same address space as application code, in contrast to a proxy that is exclusive of the application" Intrinsic Evidence • '058 Patent Specification, Figures 2, 6, 7 • Jan. 15, 2010 Response, at 10
shared library	'058 Patent, claim 1	"an application library whose code space is shared among all user mode applications" Intrinsic Evidence: '058 Patent at 1:21-54, 2:4-40, 3:6-45, 3:51-64, 4:1-5, 4:32-38, 4:48-60, 5:21-6:3, 6:31-36, 6:49-55, 6:66-7:22, 7:63-9:57, 10:26-46, and Figs. 4-6; Provisional Patent Application No. 60/504,213 at 9 Extrinsic Evidence: Any expert testimony disclosed by either party under P.R. 4-3(b); any other extrinsic evidence disclosed by Defendants	"an application library code space shared among all user mode applications. The code space is different than that occupied by the kernel and its associated files. The shared library files are placed in an address space that is accessible to multiple applications," wherein an "application library" is "a collection of functions in an archive format that is combined with an application to export system elements" Intrinsic Evidence • '058 Patent at 6:46-48; 6:49-53; 6:54-55

10

APPENDIX D – Disputed Constructions & Support (IBM Counterclaim Patents)

Disputed Claim Term or Phrase	IBM's Proposed Construction & Support	VirtaMove's Proposed Construction & Support
A system… …are created during installation… …are removed as part of an uninstall…	IBM's Construction: Plain and ordinary meaning. IBM's Intrinsic Evidence: '500 patent at 2:49-67; 3:1-15; 5:50-67; 6:1-56 Figs. 1, 2, 3, 8, 10; cls. 1,14; '500 patent file history (IBM_VM_0000000888). '038 patent at 2:60-67; 3:1-15; 6:1-60; 6:62-7:8; Figs. 1, 2, 3, 8, 10; cls. 1, 14; '038 patent file history (IBM_VM_0000000483). '634 patent at 2:36-67; 3:1-2; Figs. 1, 3, 4; cl. 1; '634 patent file history (IBM_VM_0000000647). Extrinsic Evidence: *Create,* Webster's II New College Dictionary (3rd ed. 2005) (IBM_VM_000023238) *Install,* Microsoft Computer Dictionary (5th ed. 2002) (IBM_VM_000023244) *Installation,* IEEE 100: The Authoritative Dictionary of IEEE Standards Terms (7th ed. 2000) (IBM_VM_000023244) *Remove,* Webster's II New College Dictionary (3rd ed. 2005) (IBM_VM_000023268)	VirtaMove's Construction: Indefinite. Intrinsic Evidence: Any intrinsic evidence cited by IBM Extrinsic Evidence: Any expert testimony disclosed by either party under P.R. 4-3(b); any other extrinsic evidence disclosed by IBM

Disputed Claim Term or Phrase	IBM's Proposed Construction & Support	VirtaMove's Proposed Construction & Support
	System, McGraw-Hill Dictionary of Electrical and Computer Engineering (6th ed. 2004) (IBM_VM_000023091)	
the system resources	IBM's Construction: Plain and ordinary meaning IBM's Intrinsic Evidence: '500 patent at Abstract, 2:56-63; 3: 5-15; 5:25-49; Figs. 1, 2, 3, 4; cls. 1, 19; '500 patent file history (IBM_VM_0000000888). '038 patent at Abstract, 2:60-67; 3: 1-15; 5:45-67; Figs. 1, 2, 3, 4; cls. 1, 19; '038 patent file history (IBM_VM_0000000483). IBM's Extrinsic Evidence: *System Resource,* Microsoft Computer Dictionary (5th ed. 2002) (IBM_VM_000023208) *Resource,* IEEE 100: The Authoritative Dictionary of IEEE Standards Terms (7th ed. 2000) (IBM_VM_000022951) *Resource,* Microsoft Computer Dictionary (5th ed. 2002) (IBM_VM_000023199) *Resource,* Dictionary of Computing (Oxford University Press) (6th ed. 2008) (IBM_VM_000023149)	VirtaMove's Construction: "the system resources inside the one or more isolated environments" refers to all of the system resources that are inside the one or more isolated environments, and "the system resources… outside" refers to all of the system resources that are outside the one or more isolated environments. In the alternative: Indefinite. Intrinsic Evidence: Any intrinsic evidence cited by IBM Extrinsic Evidence: Any expert testimony disclosed by either party under P.R. 4-3(b); any other extrinsic evidence disclosed by IBM

Disputed Claim Term or Phrase	IBM's Proposed Construction & Support	VirtaMove's Proposed Construction & Support
	Resource, Webster's II New College Dictionary (3rd ed. 2005) (IBM_VM_000023271) *System,* McGraw-Hill Dictionary of Electrical and Computer Engineering (6th ed. 2004) (IBM_VM_000023091) *System,* IEEE 100: The Authoritative Dictionary of IEEE Standards Terms (7th ed. 2000) (IBM_VM_000022958) *System,* Microsoft Computer Dictionary (5th ed. 2002) (IBM_VM_000023205) *System,* Webster's II New College Dictionary (3rd ed. 2005) (IBM_VM_000023277) *System,* Webster's New World Computer Dictionary (10th ed. 2003) (IBM_VM_000023043) Expert declaration of Dr. Angelos Stavrou	
appropriate for infrastructure configuration mapping	IBM's Construction: Plain and ordinary meaning IBM's Intrinsic Evidence: '858 patent at 32:10-46; 32:54-60; 40:6-20; Figs. 16, 17, 19; cls. 1, 19; '858 patent file history (IBM_VM_0000000147). IBM's Extrinsic Evidence:	VirtaMove's Construction: Indefinite. Intrinsic Evidence: Any intrinsic evidence cited by IBM; '858 Patent at 17:28-44, 23:54-24:24, 32:47-33:23, 33:66-34:9, 35:25-34, 37:62-38:20, 41:26-51, 63:1-14, and associated figures.

13

Disputed Claim Term or Phrase	IBM's Proposed Construction & Support	VirtaMove's Proposed Construction & Support
	Appropriate, Webster's II New College Dictionary (3rd ed. 2005) (IBM_VM_000023308) *Configuration,* McGraw-Hill Dictionary of Electrical and Computer Engineering (6th ed. 2004) (IBM_VM_000023064) *Configuration,* IEEE 100: The Authoritative Dictionary of IEEE Standards Terms (7th ed. 2000) (IBM_VM_000022916) *Configuration,* Microsoft Computer Dictionary (5th ed. 2002) (IBM_VM_000023169) *Configuration,* Dictionary of Computing (Oxford University Press) (6th ed. 2008) (IBM_VM_000023110) *Configuration,* Webster's II New College Dictionary (3rd ed. 2005) (IBM_VM_000023232) *Configuration,* Webster's New World Computer Dictionary (10th ed. 2003) (IBM_VM_000023019) *Map,* Microsoft Computer Dictionary (5th ed. 2002) (IBM_VM_000023190) *Mapping,* Webster's New World Computer Dictionary (10th ed. 2003) (IBM_VM_000023034)	Extrinsic Evidence: Any expert testimony disclosed by either party under P.R. 4-3(b); any other extrinsic evidence disclosed by IBM

14

Disputed Claim Term or Phrase	IBM's Proposed Construction & Support	VirtaMove's Proposed Construction & Support
	Mapping, IEEE 100: The Authoritative Dictionary of IEEE Standards Terms (7th ed. 2000) (IBM_VM_000022937) *Memory Mapping,* Dictionary of Computing (Oxford University Press) (6th ed. 2008) (IBM_VM_000023134) Expert declaration of Dr. Angelos Stavrou	
instance of an image	IBM's Construction: Plain and ordinary meaning, which is "an occurrence or copy of an image" IBM's Intrinsic Evidence: '858 patent at 15:30-36, 44:45-51; 45:1-15; 45:16-18; 50:52-67; 51-1-11; Figs. 22, 23, 34; cls. 1, 19; '858 patent file history (IBM_VM_0000000147). IBM's Extrinsic Evidence: *Image,* McGraw-Hill Dictionary of Electrical and Computer Engineering (6th ed. 2004) (IBM_VM_000023361) *Image,* IEEE 100: The Authoritative Dictionary of IEEE Standards Terms (7th ed. 2000) (IBM_VM_000022988) *Image,* Microsoft Computer Dictionary (5th ed. 2002) (IBM_VM_000023416)	VirtaMove's Construction: Image: a template that includes virtual hardware suggestions and a virtual disk containing at least an operating system. Instance of an image: a virtual machine derived from an image, which further includes virtual hardware allocations and a hypervisor of virtual machine runtime. In the alternative: Indefinite. Intrinsic Evidence: Any intrinsic evidence cited by IBM; '858 Patent at 7:27-8:43, 11:1-3, 50:52-51:21, 55:30-32, and associated figures, including without limitation Figs. 25, 33-38. Extrinsic Evidence: Any expert testimony disclosed by either party under P.R. 4-3(b); any other extrinsic evidence disclosed by IBM

Disputed Claim Term or Phrase	IBM's Proposed Construction & Support	VirtaMove's Proposed Construction & Support
	Image, Dictionary of Computing (Oxford University Press) (6th ed. 2008) (IBM_VM_000023382) *Image,* Webster's II New College Dictionary (3rd ed. 2005) (IBM_VM_000023326) *Instance,* IEEE 100: The Authoritative Dictionary of IEEE Standards Terms (7th ed. 2000) (IBM_VM_000022991) *Instance,* Microsoft Computer Dictionary (5th ed. 2002) (IBM_VM_000023419) *Instance Variable,* McGraw-Hill Dictionary of Electrical and Computer Engineering (6th ed. 2004) (IBM_VM_000023364) Expert declaration of Dr. Angelos Stavrou	
capturing	IBM's Construction: Plain and ordinary meaning IBM's Intrinsic Evidence: '858 patent at 9:55-67; 10: 1-52; 19:18-43; 21: 4-67; 22: 1-31; Figs. 5, 12; cl. 1; '858 patent file history (IBM_VM_0000000147). IBM's Extrinsic Evidence: *Capture,* Microsoft Computer Dictionary (5th ed. 2002) (IBM_VM_000023403)	VirtaMove's Construction: Indefinite. In the alternative, "transferring into a file" Intrinsic Evidence: Any intrinsic evidence cited by IBM; '858 Patent at 9:55-10:67, 13:17-49, 20:55-22:4, 43:38-65, 48:3-21, 51:15-21, 54:61-67, 62:33-52, 63:56-64, 64:48-52, 66:20-28, and associated figures, including without limitation Figs. 5, 7, 12

Disputed Claim Term or Phrase	IBM's Proposed Construction & Support	VirtaMove's Proposed Construction & Support
	Capture, Webster's New World Computer Dictionary (10th ed. 2003) (IBM_VM_000023290) Expert declaration of Dr. Angelos Stavrou	Extrinsic Evidence: Any expert testimony disclosed by either party under P.R. 4-3(b); any other extrinsic evidence disclosed by IBM
non-functional requirements	IBM's Construction: Plain and ordinary meaning IBM's Intrinsic Evidence: '858 patent at 7:65-8:4; 31:61-66; 39:40-60; Figs. 16, 17; cls. 3, 4, 5, 7; '858 patent file history (IBM_VM_0000000147). IBM's Extrinsic Evidence: *Nonfunctional Requirements,* McGraw-Hill Dictionary of Scientific and Technical Terms (6th ed. 2002) (IBM_VM_000023396) *Nonfunctional Packages Software,* Dictionary of Computing (Oxford University Press) (6th ed. 2008) (IBM_VM_000023439) Expert declaration of Dr. Angelos Stavrou	VirtaMove's Construction: Indefinite. Intrinsic Evidence: Any intrinsic evidence cited by IBM; '858 Patent at 39:35-40:5 Extrinsic Evidence: Any expert testimony disclosed by either party under P.R. 4-3(b); any other extrinsic evidence disclosed by IBM
module	IBM's Construction: Plain and ordinary meaning Not subject to 35 U.S.C. §112(6)	VirtaMove's Construction: Each reference to "module" is governed by 35 U.S.C. §112(6), and is indefinite.

Disputed Claim Term or Phrase	IBM's Proposed Construction & Support	VirtaMove's Proposed Construction & Support
	IBM's Intrinsic Evidence: '858 patent at 31:54-32:10; 32:10-32:46; 32-47-33:3; 42:17-33; 67: 29-43; 70: 25-61; Figs. 16-19; cl. 18; '858 patent file history (IBM_VM_0000000147). IBM's Extrinsic Evidence: *Module,* McGraw-Hill Dictionary of Electrical and Computer Engineering (6th ed. 2004) (IBM_VM_000023367) *Module,* IEEE 100: The Authoritative Dictionary of IEEE Standards Terms (7th ed. 2000) (IBM_VM_000022997) *Module,* Microsoft Computer Dictionary (5th ed. 2002) (IBM_VM_0000 *Module,* Dictionary of Computing (Oxford University Press) (6th ed. 2008) (IBM_VM_000023422) *Module,* Webster's II New College Dictionary (3rd ed. 2005) (IBM_VM_000023338) Expert declaration of Dr. Angelos Stavrou	Intrinsic Evidence: Any intrinsic evidence cited by IBM; '858 Patent at 2:4-13, 5:58-67, 30:11-23, 50:12-23, 68:46-70:61 Extrinsic Evidence: Any expert testimony disclosed by either party under P.R. 4-3(b); any other extrinsic evidence disclosed by IBM
cloud infrastructure	IBM's Construction: Plain and ordinary meaning, which is "a network of interconnected nodes." IBM's Intrinsic Evidence:	VirtaMove's Construction: Plain and ordinary meaning, which is: an infrastructure comprising a network of interconnected nodes that provides for on- demand self-service, broad network access, resource pooling, rapid elasticity, and measured service

Disputed Claim Term or Phrase	IBM's Proposed Construction & Support	VirtaMove's Proposed Construction & Support
	'858 patent at 4:6-47; 5:31-3315:7-29; Figs. 16, 19; cls. 1, 4, 5, 6, 8, 9, 10,11, 12, 19. Expert declaration of Dr. Angelos Stavrou	providing transparency for both the provider and consumer of the Intrinsic Evidence: Any intrinsic evidence cited by IBM; '858 Patent at "Other Publications," 4:9-5:33 Extrinsic Evidence: Any expert testimony disclosed by either party under P.R. 4-3(b); any other extrinsic evidence disclosed by IBM; IBM International Technical Support Organization Publication SG24-8324-00, "Creating IBM z/OS Cloud Services," available at https://www.redbooks.ibm.com/redbooks/ pdfs/sg248324.pdf; NIST Special Publication 800-145, "The NIST Definition of Cloud Computing," available at https://nvlpubs.nist.gov/nistpubs/ Legacy/SP/nistspecialpublication800-145.pdf

19